AUG 4 1982

ORIGINAL

Calendar No. 725

97TH CONGRESS, 2d Session } SENATE { REPORT No. 97-507

41.1/5:97-507

COMPLETED

AUTHORIZING THE PURCHASE, SALE, AND EXCHANGE OF LANDS BY THE DEVILS LAKE SIOUX TRIBE OF THE DEVILS LAKE SIOUX RESERVATION, NORTH DAKOTA, AND FOR OTHER PURPOSES

JULY 28 (legislative day, JULY 12), 1982.—Ordered to be printed

Mr. COHEN, from the Select Committee on Indian Affairs, submitted the following

REPORT

[To accompany S. 503]

The Select Committee on Indian Affairs, to which was referred the bill (S. 503) to authorize the purchase, sale, and exchange of lands by the Devils Lake Sioux Tribe of the Devils Lake Sioux Reservation, North Dakota, and for other purposes, having considered the same, reports favorably thereon with an amendment in the nature of a substitute and recommends that the bill as amended do pass.

The amendment in the nature of a substitute is as follows:

Strike out all after the enacting clause and insert the following:

SECTION 1. The Congress finds that—

(1) the Devils Lake Sioux Tribe, of the Devils Lake Sioux Reservation, North Dakota, is vigorously pursuing its goal of self-determination through development of manufacturing and farming enterprises; and

(2) the continued existence of the Devils Lake Sioux Reservation, North Dakota, as a permanent homeland of the Devils Lake Sioux Tribe and as a necessary foundation for continued self-determination requires that the Secretary of the Interior have authority to—

(A) consolidate and increase the trust land base in the reservation for the tribe and individual tribal members, and

(B) prevent further loss of trust land.

SEC. 2. (a) The Secretary of the Interior (hereinafter in this Act referred to as the "Secretary") is authorized to—

(1) purchase with any funds, or acquire by gift, exchange, or relinquishment, any interest in land (or any improvements thereon) located within the boundaries of the Devils Lake Sioux Reservation for the benefit of the Devils Lake Sioux Tribe or individual members of such tribe;

(2) sell or approve sales of any interest in tribal trust or tribal restricted land (or any improvements thereon) located within the boundaries of the Devils Lake Sioux Reservation but only if additional tribal trust or tribal restricted land which is approximately equal in acreage or value to the interest sold is acquired by the Secretary at the time of such sale; and

(3) exchange any interest in tribal or individual trust land or tribal or individual restricted land (or any improvements thereon) for any land located within the Devils Lake Sioux Reservation but only if the values of the interests in land involved in such an exchange are equal or are equalized by the payment of money.

(b) Any purchase of Federal lands under subsection (a)(1) shall be made in accordance with the provisions of the Federal Land Policy and Management Act of 1976 (90 Stat. 2744).

SEC. 3. The Secretary shall accept any transfer of title from the Devils Lake Sioux Tribe, or from any individual member of such tribe, for any interest in land (or any improvements thereon) located within the boundaries of the Devils Lake Sioux Reservation, and shall take title to such property in the name of the United States in trust for the benefit of the Devils Lake Sioux Tribe, or for such individual member.

SEC. 4. Any acquisition, sale, or exchange of lands for the Devils Lake Sioux Tribe which is made under this Act shall be made only upon the request of the authorized governing body of the Devils Lake Sioux Tribe, subject to the limitations and procedures of the tribal constitution.

SEC. 5. Notwithstanding any other provision of applicable law, the title to any interest in land, or any improvements thereon, acquired by the Secretary under this Act shall be acquired in the name of the United States in trust for the benefit of the Devils Lake Sioux Tribe or an individual member of such tribe, as the case may be, and such property shall be held and treated in the same manner as other trust or restricted Indian lands are held and treated under Federal law.

SEC. 6. Money or amounts credited to the Devils Lake Sioux Tribe from the sale or exchange under this Act of any interest in trust or restricted land (or any improvements thereon) may be used only for the purpose of purchasing or acquiring property under this Act and shall be deposited in a special account under the control of the Secretary or his duly authorized representative.

SEC. 7. Subsection (a) of the first section of the Act of August 9, 1955 (69 Stat. 539; 25 U.S.C. 415), as amended, is further amended—

(1) by striking out "and leases of land on the Aqua Caliente" in the second sentence and inserting in lieu thereof "leases of land on the Aqua Calinete", and

(2) by striking out "and the lands comprising the Moses Allotment Numbered 10, Chelan County, Washington," in the second sentence and inserting in lieu thereof the following: "leases of the lands comprising the Moses Allotment Numbered 10, Chelan County, Washington, and leases to the Devils Lake Sioux Tribe, or any organization of such tribe, of land on the Devils Lake Sioux Reservation,".

SEC. 8. (a)(1) A person who is not an enrolled member of the Devils Lake Sioux Tribe shall not be entitled to receive by devise or descent any interest in trust or restricted land located within the Devils Lake Sioux Reservation, if—

(A) the Devils Lake Sioux Tribe files with the Secretary notice of intent to purchase such interest, and

(B) while the decedent's estate is pending before the Administrative Law Judge, the Devils Lake Sioux Tribe purchases such interest by paying to the Secretary for the benefit of such person an amount equal to the fair market value of such interest (as determined by the Secretary after appraisal).

(2) Within 90 days after the date on which the Secretary receives payment of an amount for the benefit of a person under paragraph (1), the Secretary shall pay such amount to such person.

(b)(1) Notwithstanding subsection (a), if—

(A) the spouse of the decedent is not an enrolled member of the Devils Lake Sioux Tribe, and

(B) such spouse would, but for this section, acquire by devise or descent an interest in trust or restricted land located within the Devils Lake Sioux Reservation, and

(C) the Devils Lake Sioux Tribe files with the Secretary notice of intent to purchase such interest, and

(D) the spouse of the decedent elects the application of this subsection, the spouse shall have a life estate in such interest and the remainder of such interest shall pass to the heirs of the decedent who are alive on the date of death of the spouse of the decedent (on a per capita basis).

(2) The passing of any remainder interest under paragraph (1) shall be subject to the provisions of subsection (a).

(c) On request of the Devils Lake Sioux Tribe, the Administrative Law Judge shall keep an estate pending for not less than two years from the date of the decedent's death.

(d) In any case in which the Devils Lake Sioux Tribe acts under subsection (a) to purchase an interest in trust or restricted land and such interest is encumbered by a spousal life estate, the value of such life estate shall be reflected in the appraisal of the Secretary made under subsection (a)(1).

(e) This section shall only apply to interests included in the estates of decedents dying on or after the date of enactment of this Act.

SEC. 9. The Devils Lake Sioux Reservation, North Dakota, is hereby declared the permanent homeland of the Devils Lake Sioux Tribe.

SEC. 10. The Secretary is authorized to take such action as may be necessary to carry out the purposes of this Act.

PURPOSE

The purpose of S. 503 is to authorize the purchase, sale, and exchange of lands by the Devils Lake Sioux Tribe of the Devils Lake Sioux Reservation, North Dakota. The bill is designed to allow the Tribe to consolidate land ownership with the reservation in order to maximize utilization of the reservation land base. The bill also would restrict inheritance of trust property to members of the Tribe provided that the Tribe paid fair market value to the Secretary of the Interior on behalf of the decedent's estate.

BACKGROUND AND NEED

The Devils Lake Sioux Reservation was established by the Treaty of February 19, 1867 as the home land of the Devils Lake Sioux Tribe. Much of the reservation land was allotted in trust to individual tribal members during the following 30 years, and on April 27, 1904, unallotted lands within the reservation were opened up for settlement by non-Indians. During the following years, some of the Indian allotments passed out of trust status and into non-Indian ownership. The reservation now contains individual Indian trust land, individual Indian fee land, tribal trust land, tribal fee land and non-Indian fee land as well as federal land. This checkerboard pattern of land ownership makes economic use of the land by the Tribe extremely difficult.

S. 503 would authorize the Secretary of the Interior ("Secretary") to acquire land or improvements within the reservation for the Tribe or individual tribal members and to sell any trust land, provided that new trust land be acquired simultaneousiy, and exchange any trust land for land within the reservation.

Further, S. 503 would also transfer any "excess" property, as defined by Section 3 of the Federal Property and Administrative Services Act, within the reservation from the General Services Administrator to the Secretary. The bill also requires that the Secretary accept any transfer of title from the Tribe or any tribal member to land within the reservation and hold such title in trust for the Tribe or the individual tribal member. Acquisition, sale or exchange of land for the Tribe would be made only upon the request of the authorized governing body of the Tribe, subject to the tribal constitution.

All lands acquired under this bill would be non-taxable and free of all charges and encumberances. Any money or credits received by the Tribe or individual tribal member from the sale or exchange of trust

land would be used only for acquiring property under the bill and would be deposited in a special account under the Secretary.

S. 503 would allow individual tribal members to lease their lands to the Tribe, subject to approval of the Secretary.

Section 8 of the bill, as amended would prevent a person not a member of the Tribe from receiving by devise or inheritance any interest in trust or restricted lands within the reservation, subject to certain specific requirements for the purchase and payment of any such interest by the Devils Lake Sioux Tribe, and subject to specific requirements for the election of a life estate by the surviving spouse of the decedent member of the Devils Lake Sioux Tribe with the remaining interest passing to the heirs of the decedent, subject to the requirements of membership in the Tribe.

S. 503 would improve management of the reservation lands and solve some of the heirship problems. Many other tribes are able to use the Indian Reorganization Act to solve such problems. However, the Devils Lake Sioux Tribe voted to reject that Act on November 17, 1934.

S. 503 would permit consolidation of landholdings, reduce instances of fractionated heirship in trust lands and provide land for tribal programs designed to improve the economy of the tribe and its members through the development of industry, recreational facilities, housing and the like.

Legislative History

On February 19 (legislative date, February 16), 1981, Senator Quentin N. Burdick of North Dakota introduced S. 503, which was referred to the Senate Select Committee on Indian Affairs. The Committee held a hearing on the bill on September 22, 1981, and reported the bill favorably, with an amendment in the nature of a substitute, on February 11, 1982.

Committee Recommendation and Tabulation of Vote

The Select Committee on Indian Affairs, by a poll of its Members on February 11, 1982, voting 7 in favor and 0 opposed, recommends that the Senate pass S. 503, as amended.

Committee Amendments

The Select Committee on Indian Affairs adopted an amendment in the nature of a substitute in order to make all technical, correcting, and clarifying changes.

Section-by-Section Analysis of S. 503, as Amended

Section 1 clarifies the intent and purpose of the bill and authorizes the Secretary of the Interior to consolidate and increase the trust land base in the reservation for the tribe and individual tribal members and prevent further loss of trust land.

Section 2 authorizes the Secretary of the Interior to purchase, acquire, exchange and sell any interest in land located within the boundaries of the Devils Lake Sioux Reservation for the benefit of the Tribe or individual members of the Devils Lake Sioux Tribe.

Section 3 provides that the Secretary shall accept any transfer of title from the Tribe or individual member for any interest in land located with the reservation and shall take title to such interest in the name of the United States in trust for the benefit of the Tribe or for such individual member.

Section 4 provides that any acquisition, sale, or exchange of lands for the Devils Lake Sioux Tribe, pursuant to this Act, shall be made only upon the request of the authorized governing body of the Tribe, subject to the limitations and procedures of the tribal constitution.

Section 5 provides that lands acquired, pursuant to this Act, by the Secretary of the Interior in the name of the United States in trust for the benefit of the Tribe or individual member of the Tribe shall be held and treated in the same manner as other trust or restricted Indian lands are held and treated under Federal law.

Section 6 provides that monies or amounts credited to the Devils Lake Sioux Tribe from the sale or exchange, under this Act, of any interest in trust or restricted land may be used only for the purchase or acquisition of property under this Act and shall be deposited in a special account under the control of the Secretary of the Interior or his duly authorized representative.

Section 7 amends the Act of August 9, 1955, subsection (a) of the first section (69 Stat. 539; 25 U.S.C. 415), as amended to provide for the leasing of restricted Indian lands located on the Devils Lake Sioux Reservation to the Devils Lake Sioux Tribe, or any organization of such tribe, subject to the approval of the Secretary of the Interior.

Section 8 prohibits a person, who is not an enrolled member of the Devils Lake Sioux Tribe, from receiving by devise or descent any interest in trust or restricted lands located within the Devils Lake Sioux Reservation, if the Tribe files a notice of intent to purchase such interest with the Secretary of the Interior, and purchases such interest, while the decedent's estate is pending before the Administrative Law Judge and pays to the Secretary, for the benefit of such person, an amount equal to the fair market value of such interest, as determined by the Secretary after appraisal. This section also provides that the Secretary shall pay such amount received to such person within 90 days after receipt of said amount.

Section 8 also provides that if the spouse of the decedent is not an enrolled member of the Devils Lake Sioux Tribe and, but for this section, would acquire by devise or descent an interest in trust or restricted land located within the Devils Lake Sioux Reservation, and the Tribe files a notice of intent to purchase such interest, said spouse may elect to take a life estate in such interest and the remainder of such interest shall pass to the heirs of the decedent who are alive on the date of death of the spouse of the decedent. The passing of any remainder interest shall be subject to the provisions of this section prohibiting nonmembers from receiving any interest in trust or restricted lands located within the reservation.

This section also provides that the Administrative Law Judge shall keep an estate pending for not less than two years from the date of the decedent's death, upon request of the Devils Lake Sioux Tribe. Section 8 further provides that in any case in which the Tribe acts to purchase the interest in trust or restricted land, under this section, and such interest is encumbered by a spousal life estate, the value of

such life estate shall be reflected in the appraisal of the Secretary made under this section.

Section 8 shall apply only to interests included in the estates of decedents dying on or after the date of enactment of this Act.

Section 9 declares that the Devils Lake Sioux Reservation, North Dakota, is the permanent homeland of the Devils Lake Sioux Tribe.

Section 10 authorizes the Secretary of the Interior to take such action as may be necessary to carry out the purposes of this Act.

Cost and Budgetary Consideration

The cost estimate for S. 503, as amended, as provided by the Congressional Budget Office, is outlined below:

U.S. Congress,
Congressional Budget Office,
Washington, D.C., February 18, 1982.

Hon. William S. Cohen,
Chairman, Select Committee on Indian Affairs,
U.S. Senate,
Washington, D.C.

Dear Mr. Chairman: Pursuant to Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has reviewed S. 503, a bill to authorize the purchase, sale, and exchange of lands by the Devils Lake Sioux Tribe of the Devils Lake Sioux Reservation, North Dakota, and for other purposes, as amended and ordered reported by the Senate Select Committee on Indian Affairs, February 11, 1982.

Based on this review, it is expected that no additional cost to the government would be incurred as a result of enactment of this legislation. The bill would allow the tribe to consolidate land ownership within the reservation in order to maximize utilization of the reservation's land base.

Should the Committee so desire, we would be pleased to provide further details on this estimate.

Sincerely,

Raymond C. Scheppach
(For Alice M. Rivlin, Director).

Regulatory Impact Statement

Paragraph 11(b) of rule XXVI of the Standing Rules of the Senate requires each report accompanying a bill to evaluate the regulatory and paperwork impact that would be incurred in carrying out the bill.

The Committee believes that S. 503, as amended, will have no regulatory or paperwork impact.

Executive Communication

The legislative report on S. 503 received by the Committee from the Department of the Interior is set forth below:

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., September 18, 1981.

Hon. WILLIAM S. COHEN,
Chairman, Select Committee on Indian Affairs, U.S. Senate, Washington, D.C.

DEAR Mr. CHAIRMAN: Your Committee has requested the views of this Department on S. 503, a bill "To authorize the purchase, sale, and exchange of lands by the Devils Lake Sioux Tribe of the Devils Lake Sioux Reservation, North Dakota, and for other purposes."

We recommend that the bill be enacted if amended as suggested herein.

S. 503 would authorize the Secretary of the Interior to acquire land or improvements within the Devils Lake Sioux Reservation for the Devils Lake Sioux Tribe or individual tribal members. Trust land within the Reservation would be authorized to be sold provided that new trust land of equal area or value would be acquired simultaneously, and trust land could be exchanged for any land within the Reservation provided that land values are equal are equal or equalized by payment of money.

The bill would transfer from the General Services Administrator to the Secretary of the Interior any excess Federal property, as defined by section 3 of the Federal Property and Administrative Services Act, within the Reservation. The Secretary would be required to accept any transfer of title from the tribe or any individual tribal member for any land within the Reservation and to hold such title in the name of the United States in trust for the Tribe or the individual tribal member. All acquisitions, sales or exchanges made under this bill could be made only at the request of the authorized governing body of the Tribe and subject to the tribal constitution. All land, interests, and improvements acquired under this bill would be nontaxable and held free of all charges or encumberances. An account under the control of the Secretary would be established for money or credits to the Tribe or any individual tribal member from the sale or exchange of trust land. The money or credit could be used only for acquiring property under this bill. Individually owned trust or restricted land within the Reservation could be leased by Indian owners to the Tribe with the approval of the Secretary for public, religious, educational, recreational, residential or business purposes.

Finally, the bill would prevent a person not a member of the Tribe from receiving by devise or inheritance any interest in trust or restricted land within the Reservation or the area ceded by the Treaty of February 19, 1867 (15 Stat. 505) if, while the decedent's estate is pending, the Tribe purchases the interest by paying to the Secretary of the Interior the fair market value of such interest. If, however, such person is the surviving spouse of the decedent, a life estate on one-half the interest acquired by the Tribe would, upon request of the spouse, be reserved for the spouse.

This Department and the Devils Lake Sioux Tribe agree that legislation is needed to permit improved management of the reservation

lands and solve heirship problems. The existing statutory authority used in this connection for many other tribes is provided by sections 4 and 5 of the Indian Reorganization Act of 1934 (48 Stat. 984; 25 U.S.C. 464 and 465). Under that Act, the Secretary of the Interior has the authority to accept gifts of land for tribes and allow exchange of land, but it does not provide authority for the sale of tribal lands held in trust by the United States. However, that Act does not apply to the Devils Lake Sioux Tribe because on November 17, 1934, the Tribe voted to reject the Act (see 25 U.S.C. 478 to 478b).

Enactment of S. 503 (with our proposed amendments) will permit consolidation of landholdings, and reduce or eliminate instances of fractional heirship interests in Indian trust lands. The legislation will also provide land for tribal programs designed to improve the economy of the Tribe and its members through the development of industry, recreational facilities, housing, and the general rehabilitation and enhancement of the total resource potential of the reservation.

We do, however, recommend a number of amendments to S. 503. Three clarifying technical amendments are needed in section 1(a). On page 2, lines 4, 7, and 9, insert "or restricted" after "trust" in each instance. Technically, the term "trust" does not include restricted land titles.

In section 1(a)(1), on page 2, line 2, the words ", *Provided*, that the purchase of any Federal lands shall be consistent with the provisions of the Federal Land Policy and Management Act of 1976" should be inserted before the period. The Bureau of Land Management administersat least 200 acres of public land and some acquired minerals within the boundaries of the Reservation. It should be made clear that the United States will receive fair market value for this public land if it is purchased and held in trust for the Tribes.

In section 1(a)(2) on page 2, line 3, the words "or individual" should be deleted as unnecessary because the Secretary has authority to approve sales of individual Indian trust land (Section 1 of the Act of June 25, 1910; 36 Stat. 855, as amended; 25 U.S.C. 372). Further, we do not believe that individual Indian trust or restricted land owners should be precluded from selling their land if no simultaneous acquisition of trust or restricted lands is contemplated.

With respect to section 1(a)(1), we interpret this amendment for land exchanges as applying to only lands within the reservation. We recommend the deletion of section 1(b) on page 2, line 15 through 20, which would authorize the General Services Administrator to transfer any excess real property to the Secretary of the Interior pursuant to the Federal Property and Administration Services Act of 1949. This authority is already covered by an amendment to that Act (40 U.S.C. 483(a)(2)) to provide for the disposal of certain excess Federal property to the Secretary of the Interior for the benefit of any group, band, or tribe of Indians.

In section 2, on page 2, line 24, the word "with" should be "within".

In section 4, on page 3, lines 13–14, delete "property and its use shall be nontaxable and held free of all charge or encumbrance whatsoever.", and insert in lieu thereof "property shall be exempt from State and local taxation." We recommend this phraseology be used instead of language which exempts use of the land from taxation. As presently written, section 4 would grant the Devils Lake Sioux Tribe tax exemp-

tions beyond what other Indian lands receive. For example, section 5 of the Indian Reorganization Act exempts only "lands or rights . . . from State and local taxation" (25 U.S.C. 465). In addition, it should be noted that the trust or restricted interests in individual Indian lands may be encumbered (see 25 U.S.C. 483a).

In section 5, on page 3, line 16, delete "or individual tribal member". Although we recognize that the intent of this legislation is to alleviate the problem of reservation land being checkerboarded with non-Indian owned land and to consolidate and to retain a tribal land base, we believe that including individual tribal members in the provisions of section 5 could possibly be detrimental to individuals' property rights. Further, in some cases, the amount of money involved might not be sufficient for the individual to use for land acquision.

Section 6, on page 3, line 23, through page 4, line 19, should be amended to read:

"SEC. 6. Section 1 of the Act of August 9, 1955 (69 Stat. 539) as amended (25 U.S.C. 415) is further amended by inserting 'with respect to leases to the Devils Lake Sioux Tribe or its subordinate organizations, the Devils Lake Sioux Reservation,' immediately after the 'Tulalip Indian Reservation,' in the second sentence."

The remainder of the authority in section 6 of the bill, as introduced, merely duplicates authority presently found in 25 U.S.C. 415.

Section 7(a), on page 5, line 1, and section 7(b) on page 5, lines 6 and 7, should each be amended by deleting "examiner of inheritance" and inserting in lieu thereof "Administrative Law Judge" to reflect the current title.

Since the general rule is that title to land passes upon the death of the owner of the estate, we recommend that section 8 on page 5, lines 17 through 20, be amended to read as follows:

"Sec. 8. The provisions of this Act shall apply to all estates of decedents whose deaths occur on or after the date of enactment of this Act, but shall not apply to the estate of any decedent whose death occurred before the date of enactment of this Act.

If amended as recommended herein, we would favor enactment of legislation.

The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

J. ROBINSON WEST,
Assistant Secretary.

CHANGES IN EXISTING LAW

In compliance with subsection 12 of rule XXVI of the Standing Rules of the Senate, the Committee notes that S. 503, as amended, amends subsection (a) of the first section of the Act of August 9, 1955 (69 Stat. 539; 25 U.S.C. 415), as amended.

O